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Timo Elomaa

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EXAMINER

LANIER, BENJAMIN E

ART UNIT

PAPER NUMBER

2132

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/023,735	Applicant(s) ELOMAA ET AL.	
	Examiner BENJAMIN E. LANIER	Art Unit 2132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-8, 18, 25, 36 and 41-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-8, 18, 25, 36 and 41-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/9/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed 22 August 2008 amends claims 6-7, and 18. Claims 41-52 have been added. Applicant's amendment has been fully considered and entered.

Response to Arguments

2. Applicant argues, "Bramhill discloses only *two* levels of control...Bramhill discloses a copy protection scheme wherein data is either not protected or wherein data is completely protected, i.e., all of the available copy controls are either enabled or disabled...the presently claimed subject matter, there are at least three levels of control." This argument is not persuasive because Bramhill discloses at least three levels of control because Bramhill discloses a first level where it is determined whether or not the user will be able to access (i.e. read) the content based upon an initial payment (Page 11, lines 1-19). Bramhill goes on to discuss that if the user is permitted to access the content based upon this initial payment, the user would be able to save the content in an unprotected format based upon additional payment (Page 16, lines 3-5). Therefore, prior to the additional payment the content could be save in the protected format. This represents three levels of "content control" as claimed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 6-8, 18, 25, 36-37, 44, 48-49, 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Bramhill, WO 98/44402. Referring to claims 6-8, 25, 49, Bramhill discloses copy protection for data wherein webpage content to be downloaded and displayed with a webpage is checked for the existence of copyright protection control information by a browser (Page 9, lines 15-24 & Page 13, lines 1-4), which meets the limitation of user interface is operable to identify indicia associated with said content said permitted set of operations being determined therefrom. The received webpage content is displayed by the browser (Page 9, lines 26-27 & Page 14, lines 27-29), but the ability to save the webpage content depends on the existence of the copyright protection control information (Page 9, lines 27-29 & Page 14, lines 29-32), which meets the limitation of a terminal having a first memory into which content is receivable, said first memory provides temporary storage of said content, a second memory and a user interface operatively associated with said first memory and said second memory. When the data is not copyright protected the user can save and copy it using the right mouse button (Figure 2 & Page 9, lines 27-29), which meets the limitation of a set of operations of said user interface in relation to said content received into said first memory is permitted by reference to said content, at least one of said operations permitted by said content being a transfer of said content to said second memory, wherein a set of operations of said user interface in relation to said content when received into said second memory is similarly permitted by reference to said content. Bramhill discloses a first level where it is determined whether or not the user will be able to access (i.e. read) the content based upon an initial payment (Page 11, lines 1-19). Bramhill goes on to discuss that if the user is permitted to access the content based upon this initial payment, the user would be able to save the content in an unprotected format based upon additional payment (Page 16, lines 3-5).

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Therefore, prior to the additional payment the content could be save in the protected format, which meets the limitation of said content being associated with at least three levels of content control.

Referring to claims 18, 51, Bramhill discloses copy protection for data wherein webpage content to be downloaded and displayed with a webpage is checked for the existence of copyright protection control information by a browser (Page 9, lines 15-24 & Page 13, lines 1-4), which meets the limitation of a user interface for a terminal wherein the interface is operable in accordance with an indicia associated with content received by the terminal, said indicia being representative of a pre-determined level of control of content. The received webpage content is displayed by the browser (Page 9, lines 26-27 & Page 14, lines 27-29), but the ability to save the webpage content depends on the existence of the copyright protection control information (Page 9, lines 27-29 & Page 14, lines 29-32). When the data is not copyright protected the user can save and copy it using the right mouse button (Figure 2 & Page 9, lines 27-29), which meets the limitations of permit operations available to a user of said terminal in relation to said content, said operations including the transfer of said content from volatile storage, into which content is received from said network, to user accessible storage. Bramhill discloses a first level where it is determined whether or not the user will be able to access (i.e. read) the content based upon an initial payment (Page 11, lines 1-19). Bramhill goes on to discuss that if the user is permitted to access the content based upon this initial payment, the user would be able to save the content in an unprotected format based upon additional payment (Page 16, lines 3-5). Therefore, prior to the additional payment the content could be save in the protected format, which meets the limitation of said content being associated with at least three levels of content control.

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Referring to claims 36, 37, Bramhill discloses that the data is wrapped in a proprietary BTC file format that includes the data and the copyright protection control information for the data (Figure 7 & Page 12, line 26 – Page 13, line 4), which meets the limitation of said content and said indicia corresponding to said content are included in a datagram, said indicia corresponding to a content is a bit included in said datagram that has been set to a predetermined state.

Referring to claims 44, 48, Bramhill discloses that the content being copyright protected could be audio samples (Page 1, lines 29-31), which meets the limitation of said content comprising a ringtone because a ringtone is an audio sample where the only implied difference is one of intended use and wherein no structural difference exists. See, e.g., *In re Otto*, 312 F.2d 937, 938, 136 USPQ458, 459 (CCPA 1963).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 41-43, 45-47, 50, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bramhill, WO 98/44402, in view of Levy, U.S. Publication No. 2002/0052885. Referring to claims 41-43, 45-47, 50, 52, Bramhill discloses control information regarding whether or not content can be rendered and saved (Page 11, lines 1-19 & Page 16, lines 3-5), but does not disclose control information over whether or not the content can be forwarded. Levy discloses a content control system that utilizes typical copy control information with the addition of an indication of whether or not the content can be shared ([0014] & [0041]). It would have been obvious to one of ordinary skill in the art at the time the invention was made for the control information of Bramhill to include an indication of whether or not the content can be forwarded in order to enhance content protection in file sharing systems as taught by Levy ([0023]).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN E. LANIER whose telephone number is (571)272-3805. The examiner can normally be reached on M-Th 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on 571-272-3799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Benjamin E Lanier/
Primary Examiner, Art Unit 2132